IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Cr. Appeal No.232 Of 2000.
Judgment reserved on : 4.7.2007.
Date of decision: July 6th, 2007.

State of Himachal Pradesh. .... Appellant.

Vs.

Ram Saran & Others. .... Respondents.

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The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr. V.K.Verma, Addl. Advocate General.

For the respondents: Mr. R.K.Gautam, Sr. Advocate, with
Mr. Anurag Sharma, Advocate.

Surinder Singh, J :

The State-appellant is felt aggrieved by the judgment of acquittal, recorded by the Sub Divisional Judicial Magistrate, Nalagarh in Criminal Case No.38/2 of 1996, decided on 26.11.1999.

It is contended in the appeal that the learned trial court has failed to view the prosecution evidence in right perspective, but at the same time, it has set unrealistic standard to evaluate the direct and cogent prosecution evidence. It is also contended that the trial

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

court has discarded the testimony of most reliable prosecution witnesses, which has resulted into miscarriage of justice.

The leave to appeal was granted on 10.5.2000 by this court and now the matter has been finally heard.

Mr. V.K. Verma, learned Additional Advocate General, has taken pains to go through the evidence on record and tried to ventilate that the judgment passed by the learned trial court is legally and factually unsustainable.

Contra, Mr. R.K. Gautam, learned Senior Advocate, duly assisted by Mr. Anurag Sharma, learned Advocate, for the respondents, while supporting the impugned judgment has vehemently argued that the view taken by the learned trial court is born out from the record, therefore, the appeal merits dismissal.

I have given my thoughtful consideration to the rival contentions of the parties and have legally scanned the evidence recorded before the trial court.

It is well established that if the view taken by the trial court is found to be a possible and reasonable view then the appellate court should not interfere with it. {Please see **Parmod Mandal** v. **State of Bihar [(2004) 13 SCC 150]}.** It has also been held in **Vijai Singh** v. **State of U.P**. **[(2005) 12 SCC 506]** that unless the judgment of trial court is found to be perverse, appellate court would not interfere with the same. Applying the above principle of law, I turn to the facts of the present case.

The respondents were charged for the offences punishable under Sections 148, 325, 323, 506 read with Section 149 of the Indian Penal Code, to which they pleaded not guilty and claimed trial.

In order to prove the charges against the respondents, the prosecution examined 10 witnesses. PW1 Lekh Ram who is alleged to have received the grievous injuries, PW2 Smt. Parveen, his sister-in-law, who also received simple injuries, PW3 Ram Pyara, the alleged eye witnesses, and has litigation with the respondents, PW4 Sita Ram, a recovery witness, resiled from his earlier statement, thus declared hostile, PW-5 Dr.C.L. Bhardwaj and PW7 Amar Singh, the alleged eye witness and Dr. M.R. Verma, a Radiologist. In their statements, recorded under Section 313 of the Code of Criminal Procedure.

The respondents stated that there was a litigation with respect to the property, where alleged incident had taken place and further that the passage of tractor which was full grit stones was blocked by the complainant party and because of the old enmity and litigation, a false case was framed against them.

On appreciation of the evidence and upon hearing the learned counsel for the parties, the learned trial court held that the cumulative effect of the following circumstances made the prosecution case doubtful:-

(i) That the FIR was not recorded or lodged at the time it was purported to have been lodged. It has also been noticed that the Roznamcha entered Ext.PW1/A has been placed on record which is stated to be proved by Lekh Ram, injured on 20.1.1996. Neither it is signed by him nor scribed by him. Even the original Roznamcha was not produced, whereas, on the basis of it, formal FIR Ext.PW10/B was recorded after three days, i.e. on 23.1.1996 and there was no explanation to that effect, more specifically when the report disclosed the commission of cognizable offences and the police was bound to register a case.

(ii) There is over-writing in the MIC Ext.PW5/B of Lekh Ram. His X-ray was conducted on 23.1.1996 when the FIR was lodged which made the case of the prosecution more suspicious.

(iii) In the rapat roznamcha ExtPW1/A, Lekh Ram is alleged to have been beaten by the respondents Hari Kishan, his mother Bhago, later Smt. Pyari and Nirmala also joined them. They are alleged to have given the kick, fist and lathi blows for half an hour. In the MLC Ext.PW5/B, the complainant Lekh Ram disclosed and was found only one injury on his forearm. Similarly, PW2 Parveen is stated to have been beaten for about half an hour by the respondents and there is only tenderness on the finger and the left lower leg and the injury was simple,

which falsify their version given as prosecution witnesses.

(iv) The recovery witness Sita Ram (PW4) denied any recovery of the lathis Exts.P1 and P2.

(v) The Investigating Officer was not examined, who had prepared site plan and also recorded the FIR.

(vi) There has been litigation inter-se the parties and matters were pending in the court which fact stands admitted by PW2 Parveen. Against PW3 Ram Pyara, alleged eye witness, there was also a case filed under Section 107/150 of the Code of Criminal Procedure lodged by the respondents. He had stated that his house is situated nearby, but there is no mention in the site plan. Further when he came to the spot, Budhu Ram, Gita Ram, Kamlesh and Amar Singh were already present and further stated that on reaching on the spot occurrence was over, therefore, in these circumstances, he cannot be said to be an eye witness to the alleged incident.

(vii) PW6 Smt.Kamlesh who is another eye witness, is the sister-in-law of the complainant. She also made a statement as that of Ram Pyara that she came after the occurrence was over. Again she cannot be stated to be the eye witness as she did not see the actual incident.

(viii) The defence version was probablised. Therefore, the entire case of the prosecution became doubtful.

In addition to the above, which has been observed by the learned trial court, I have also found

that the rapat roznamcha Ext.PW1/A was initially registered for causing the breach of peace, but it appears that on the basis of medico legal certificate of PW1 Lekh Ram, the case was turned out to be a case punishable under section 325 of the Indian Penal Code. The rapat Roznamcha aforesaid gave the reference of Gita Ram and Pyare Lal, as eye witnesses. Gita Ram was not examined and the name of Pyare Lal did not find mentioned in the list of witnesses. The complainant party later on included those, who were either closed relations of the complainant or were convenient and inimical to the respondents. On the top of it, neither the name of Ram Saran has been mentioned in the Rapat Roznamcha, nor in the FIR as the assailant. He being the head of the family of the respondents, appears to have been roped in the instant case alongwith the respondents on account of old litigation and inimical relations. No independent witness of the incident was produced to lend strength to the case of prosecution.

Having regard to the entire evidence and having carefully and closely considering the judgment of the trial court, it appears that the view taken by the trial court was reasonable and plausible and that the prosecution failed to prove its case beyond all reasonable doubts. In these circumstances, the trial court judgment of acquittal cannot be converted into the conviction. It is a settled law that if two views are

possible, one has held by the trial court for acquitting the accused and another for convicting them, in such a situation, rule of prudence requires not to disturb the order of acquittal, made by the trial court, unless the conclusions of trial court drawn on the evidence on record are perverse and unsustainable. Since the view taken by the trial court is reasonable and plausible, therefore, in my considered opinion, it requires no interference, as such, the appeal is dismissed.

The respondent is hereby discharged of his bail bonds, entered upon at any time during the proceedings of this case. The matter stands accordingly disposed of.

July 6th, 2007. **(Surinder Singh)**
(PDS) **Judge**.